

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

18-CR-108-EAW

ROBERT MORGAN, FRANK GIACOBBE, TODD
MORGAN, AND MICHAEL TREMITI,

Defendants.

In Re: Sale of 4187 and 4189 Veterans Memorial Drive,
Batavia, New York (an Unindicted Property)

**STIPULATION BY AND AMONG THE UNITED STATES OF AMERICA, ROBERT
MORGAN, TODD MORGAN, AND MORGAN 4181 VETERANS DRIVE LLC**

With regard to the premises, buildings, appurtenances, improvements and real property located at 4187 and 4189 Veterans Memorial Drive, Batavia, New York (SBL# 8.-1-62.211), as more particularly described on Exhibit A (attached hereto), the United States of America, Robert Morgan, Todd Morgan, and Morgan 4181 Veterans Drive LLC, owner of the real property located at 4187 and 4189 Veterans Memorial Drive, Batavia, New York, (collectively, the “Parties”) hereby stipulate as follows:

1. WHEREAS Morgan 4181 Veterans Drive LLC (the ‘Owner’) owns the real property located at 4187 and 4189 Veterans Memorial Drive, Batavia, New York (the “Batavia”).

2. WHEREAS no Defendant named in the Superseding Indictment in the above-captioned proceeding (Dkt. 42) has a direct ownership interest in the Batavia.

3. WHEREAS Robert Morgan and Todd Morgan have an indirect interest in the Owner.

4. WHEREAS the Batavia is a real property that is not subject to the forfeiture allegations in the Superseding Indictment, incorporated herein by reference.

5. WHEREAS the Batavia is not a real property subject to civil forfeiture pursuant to the civil forfeiture action, *United States of America v. The Premises and Real Property with All Buildings, Appurtenances, and Improvements, Located at 7405 Morgan Road, et. al.*, 1:19-CV-01157 (EAW) (W.D.N.Y. August 28, 2019) or *United States of America v. Any and All Joint Venture Units of Morgan Interest Holders, et. al.*, 1:20-CV-00334 (EAW) (W.D.N.Y. March 20, 2020) (the “Civil Forfeiture Actions”).

6. WHEREAS the Batavia is not subject to any other civil, criminal, or ancillary forfeiture action related to the above-captioned proceeding, the Civil Forfeiture Action, or the related criminal investigation.

7. WHEREAS there is no court order authorizing the United States of America to seize or lawfully restrain the sale, transfer, or disposal of the Batavia.

8. WHEREAS there are no advances made by the Receivership Entities (as defined in the Order Appointing Receiver (Dkt. 39) and clarified by the Stipulation and Order (Dkt. 49) in *Securities and Exchange Commission v. Morgan, et al.*, 19-CIV-661-EAW (the “SEC Action”)) for the benefit of the Batavia, as evidenced by the Receiver’s August 8, 2019 Accounting For the Receivership Entities (Dkt. 53) filed in the SEC Action.

9. The Parties agree to effectuate the transaction set forth in the purchase and sale agreement, dated July 8, 2020, by and between the Owner and 520 Associates, LLC (“Purchaser”) or its permitted assignee or another bona fide purchaser (the “Sale”).

10. The Parties agree that Purchaser is not restrained from making payments to the Owner, any Party, or any third parties (including any LLC or entity that the Defendants may have a membership interest in) related to the Sale or its ownership and operation of the Batavia.

11. The Parties agree that there is no restriction on any proceeds from the Sale.

12. The United States Attorney's Office for the Western District of New York and/or any of the federal agencies participating in the current criminal investigation related to the Superseding Indictment hereby agrees that, upon the Sale, they will not pursue as part of its criminal or civil forfeiture claims, and specifically and expressly waives any claim to the forfeiture of the premises, buildings, appurtenances, improvements and real property of the Batavia, except on the basis of conduct alleged to occur after the date of the Sale and which is unrelated to the investigation in this matter and the related civil forfeiture matters.

13. The United States Attorney's Office for the Western District of New York and/or any of the federal agencies participating in the current criminal investigation related to the Superseding Indictment hereby agrees that, upon the Sale, they will not pursue as part of its criminal or civil forfeiture claims, and specifically and expressly waives any claim to the forfeiture of Purchaser's lender's secured interest in monies to be loaned and advanced to Purchaser by its lender, if any, as well as any related principal and interest payments which will be made by Purchaser to its lender, if any.

Dated: August 11, 2020

By: JAMES P. KENNEDY, JR.
United States Attorney

S/Mary Clare Kane

Mary Clare Kane
Assistant United States Attorney
United States Attorney's Office
Western District of New York
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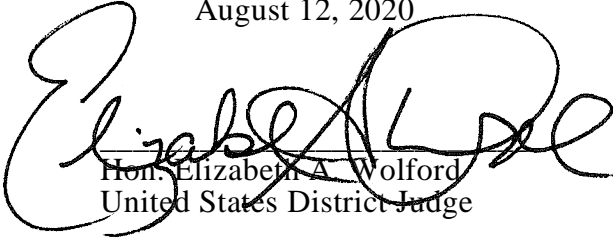
HARRIS BEACH PLLC

By: *S/Jordan C. Alaimo*

Jordan C. Alaimo
Attorneys for Morgan 4181 Veterans Drive LLC
99 Garnsey Road
Pittsford, New York 14534

SO ORDERED:

Dated: Rochester, New York
August 12, 2020

A handwritten signature in black ink, appearing to read "Elizabeth A. Wolford", is written over the printed name and title. The signature is fluid and cursive, with the first name "Elizabeth" being more prominent and the last name "Wolford" following in a similar style. The signature is written in black ink on a white background.

Hon. Elizabeth A. Wolford
United States District Judge

EXHIBIT A

All that tract or parcel of land situate in the Town of Batavia, County of Genesee and State of New York being part of Lot 7, Section 3, Township 12, Range 2 of the Holland Land Company Survey, said parcel being more particularly described as follows:

Commencing at a Point in the westerly right of way line of Veterans Memorial Drive at the southeast corner of the "Outparcel" as shown on a Subdivision Plan of Lot 8 filed in the Genesee County Clerk's Office as Map #1487, thence; North $16^{\circ} 55' 02''$ East, and along the westerly right of way line of said Veterans Memorial Drive a distance of 130.48' feet to the True Point of Beginning of the following described parcel, thence;

1. South $31^{\circ} 40' 35''$ West, a distance of 126.33' feet to a point, thence;
2. North $58^{\circ} 19' 25''$ West, a distance of 205.25' feet to a point, thence;
3. North $31^{\circ} 40' 35''$ East, a distance of 273.63' feet to a point, thence;
4. North $87^{\circ} 51' 02''$ East, a distance of 99.33' feet to a point, thence;
5. Easterly and Southerly, on a curve to the right having a central angle of $61^{\circ} 21' 04''$, and a radius of 39.00' feet, an arc distance of 41.76' feet to a point, thence;
6. Southerly, on a curve to the right having a central angle of $12^{\circ} 53' 25''$, and a radius of 867.00' feet, an arc distance of 195.06' feet to a point, thence;
7. South $16^{\circ} 55' 02''$ West, a distance of 9.63' feet to the True Point of Beginning containing $56,315.55 \pm$ square feet or $1.293 \pm$ acres.

All as shown on a map prepared by Arrowpoint Land Surveyors titled "Final Plat - Out Parcel Resubdivision", dated April 17, 2017.